IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.669 OF 2004
IN
SUMMARY SUIT NO.2171 OF 2004

Madhusudan Srikrishna .. Plaintiffs

Vs.

M/s.Emkay Exports and Ors. ..Defendants

Mr.N.D.Jaywant for the plaintiffs

Mr.A.G.Damle for the defendants

CORAM : S.U.KAMDAR, J
DATED : 21ST SEPTEMBER, 2005

P.C.:

1. The present suit is filed for the recovery of sum of Rs.25,22,626 in respect of two bills for goods sold and delivered. The defence raised is that the goods are not received. Para 3 of the affidavit in reply shows the rubber stamp of the defendants without there being any signature of defendant. It is the case of defendants that the said cheque was issued for the aforesaid amount on 15.7.04 as a postdated cheque. The bank account from which the said cheque was issued was closed on 22.4.02 and that the defendant was in Judicial Custody from 8.7.04 to 5.8.04 and hence, it is not possible for him to issue the cheque on 15.7.04.

There is no substance in the said defence. It is because if the defendant has issued a post dated cheque and has admitted of having handed over the said cheque to the plaintiff merely by closing account subsequently his liability to pay cannot be extinguished. The third defence raised by the defendant is that there is an Arbitration clause in the agreement and therefore the matter should be referred to Arbitration. This argument also has no merits because the defendant has not initiated any proceedings under Section 8 of Arbitration and Conciliation Act, 1996. However, with a view to give an opportunity to the defendants to defend the suit, I direct the defendants to deposit a sum of Rs.25.0 lacs within 4 weeks failing which plaintiff will be entitled to decree. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised Bank in Fixed Deposit initially for a period of 3 years and then renew the same from time to time till further orders of this court. If the amount is deposited then suit is to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks

from the date of deposit. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.